

I am submitting this paper on behalf of the Houston Firefighters' Relief and Retirement Fund. The paper details a technical correction proposal to Section 828 of the Pension Protection Act.

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# The Pension Protection Act of 2006, Section 828

## Proposed Technical Correction

### The Pension Protection Act, Section 828

#### SEC. 828. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.

(a) IN GENERAL. —Section 72(t) of the Internal Revenue Code of 1986 (relating to subsection not to apply to certain distributions) is amended by adding at the end the following new paragraph:

“(10) DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

“(A) IN GENERAL.—In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414(d)) which is a defined benefit plan, paragraph (2)(A)(v) shall be applied by substituting ‘age 50’ for ‘age 55’.

“(B) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this paragraph, the term ‘qualified public safety employee’ means any employee of a State or political subdivision of a State who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

### Explanation of Section 828

According to the Joint Committee on Taxation’s Technical Explanation of the Pension Protection Act (JCX-38-06, p. 177), Section 828 provides that “the 10-percent early withdrawal tax does not apply to distributions from a governmental defined benefit pension plan to a qualified public safety employee when separated from service after age 50.”

### Questions Following Enactment

- (1) Whether the Section 72(t)(4) recapture tax would apply if a qualified public safety employee began a series of substantially equal periodic payments before or after enactment of Section 828 and then changed the series to utilize the new Section 828 exception?
- (2) Whether a qualified public safety employee who begins a series of substantially equal periodic payments before or after enactment of Section 828 is precluded from utilizing the new exception provided under Section 828?

## **Discussion of Questions**

**Question 1** – Prior to or following enactment of Section 828 some qualified public safety employees reached age 50, separated from service, and began taking a series of substantially equal periodic payments. These payments may have been necessitated by their children's education expenses or their own health expenses. Meanwhile, other public safety employees reached age 50, separated from service, but were in a financial situation that allowed them to defer distributions.

While the latter group may begin taking penalty-free distributions following enactment of Section 828, the former group cannot change its series of substantially equal period payments without triggering the recapture tax under Section 72(t)(4). The former group finds itself disadvantaged under the revised statute.

The final months or years of a public safety employee's life may be ones of catastrophic illness brought about by the on-the-job hazards they faced for years while protecting the public. Through enactment of Section 828 Congress demonstrated its belief that public safety employees who have reached age 50 should be given the flexibility to receive pension distributions without being penalized. Unfortunately, a small class of public safety employees stand to be denied this tax relief because they began a series of periodic payments.

The *first sentence* of the proposed technical correction language below provides that those qualified public safety employees who find themselves caught between the recapture tax and the new Section 828 exception will not be subject to the additional tax.

**Question 2** – A question has been raised within the governmental plan community over whether a qualified public safety employee who began a series of substantially equal periodic payments would be precluded from taking advantage of the new Section 828. The *second sentence* of the language below provides that commencing a series of substantially equal periodic payments does not preclude a qualified public safety employee from subsequently taking a penalty-free distribution under Section 828.

## **Proposed Technical Correction Language**

Section 72(t)(10) is amended by adding a new subparagraph:

“(C) APPLICATION TO SERIES OF SUBSTANTIALLY EQUAL PERIODIC PAYMENTS.— Section 72(t)(4) shall not apply if a change in a series of substantially equal periodic payments is made after the date of enactment of this paragraph to a qualified public safety employee, provided the qualified public safety employee met the requirements of subparagraph (A) at the time the substantially equal periodic payments commenced. Additional tax under this section is waived as to distributions to which subparagraph (A) applies, regardless of whether prior distributions were made pursuant to section 72(t)(2)(A)(iv). ”